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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/768,939	01/23/2001	Bronwyn C. Rice	RIE600	9740

7590 10/01/2004

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EXAMINER

GRAYSAY, TAMARA L

ART UNIT PAPER NUMBER

3623

DATE MAILED: 10/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/768,939

Applicant(s)

RICE, BRONWYN C.

Examiner

Tamara L. Graysay

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 January 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>26 Apr 2001</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to because:
 - a. every line is not sufficiently dense and dark, and uniformly thick and well-defined, as required by 37 CFR 1.84(l);
 - b. the reference characters must be plain and legible, as required by 37 CFR 1.84(p)(1);
 - c. the view numbers must be larger than the numbers used for reference characters, as required by 37 CFR 1.84(u);
 - d. the use of broken lines in FIG.1, to represent website 50, is confusing because 37 CFR 1.84(h)(4) defines broken lines to represent an alternate or moved position; and
 - e. if website 50, depicted in FIG.1, is a modified form of construction, then it must be shown in a separate view in accordance with 37 CFR 1.84(h)(5).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement

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Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-7 and 14-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test: (1) whether the invention is within the technological arts; and (2) whether the invention produces a useful, concrete, and tangible result.

As to the first prong, for a claimed invention to be statutory the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the “progress of science and the useful arts” (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, involve, use, or advance the technological arts.

As to the second prong, for a claimed invention to be statutory the claimed invention must produce a useful, concrete, and tangible result.

Claims 1-7

a. FIRST PRONG: In the present case, even though a practical application of initiating contact with the chef to schedule the chef to prepare an ethnic dish is recited in process claims 1, the claimed process lacks a tie to any technological art. The process claims 1-7 do not recite any limitations that involve a technology, and the claimed process steps do not require use of any technology to implement the invention. The claimed databases are disclosed and claimed as comprising paper files, not necessarily any technological art.

Further, mere intended or nominal use of a component, albeit within the technological arts, does not confer statutory subject matter to an otherwise abstract idea if the component does not apply, involve, use, or advance the underlying process. The claimed process must utilize technology in a non-trivial manner. In the present case, even though the process of claims 2 and 7 applies, involves, or uses technology by “accessing via a computer,” it is a nominal use of computer-related technology and falls short of non-trivial utilization of technology.

SECOND PRONG: In the present case, the claimed invention produces a database of information, which is a useful, concrete, and tangible result.

In conclusion, process claims 1-7 meet the second prong of the two-prong test because they produce a useful, concrete, and tangible result, however, they do not meet the first prong because they are not within a technological art, as explained above. Therefore, process claims 1-7 are deemed to be directed to non-statutory subject matter.

Claims 14-20

b. FIRST PRONG: In the present case, even though a practical application of contacting the chef and the chef preparing an ethnic meal is recited in claim 14, the claimed process lacks a tie to any technological art. The process claims 14-20 do not recite any limitations that involve a technology, and the claimed process steps do not require the use of any technology to implement the invention.

SECOND PRONG: In the present case, the claimed invention produces a home-cooked ethnic meal, which is a useful, concrete, and tangible result.

In conclusion, process claims 14-20 meet the second prong of the two-prong test because they produce a useful, concrete, and tangible result, however, they do not meet the first prong because they are not within a technological art, as explained above. Therefore, process claims 14-20 are deemed to be directed to non-statutory subject matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-10, 12-16, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stipanovich (US-5117353) in view of Wiesner (article cited by applicant, reference 18) and Goldman (article cited by applicant, reference 22).

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a. Regarding claims 1-3, 14, 18, and 19, Stipanovich discloses a generic method of compiling information (e.g., client name, address, telephone number) about a client who requires temporary help services in a job order file (300); compiling information about temporary help workers, i.e., workers/employees of the temporary help business; and the temporary help business and its computer form an agency which links the buyer information with the worker/employee information. Stipanovich discloses initiating contact by the client who requires temporary help services via telephone or otherwise (C.7, L.41-45) to specify the job requirements. Stipanovich discloses scanning the employee inventory database (200) for a worker/employee whose skills and training (94) match the job requirements (Ref. 59, 60; Fig.6; C.8, L.62 to C.10, L.42); and initiating contact (step 100) from the agency to the worker/employee to schedule (C.10, L.1-5) the worker/employee to perform services for the client. Stipanovich discloses the client defining the parameters of the worker/employee skills and training. Stipanovich lacks the particular application of the temporary help business to a chef service for clients having a dietary requirement that is to be met by the chef's ethnic ancestry and informal training.

Wiesner teaches a temporary help business specializing in chefs. The temporary help business is contacted by a client when a chef is needed for various jobs, including private dining facility (P.1, ¶.9). The examiner takes official notice that a home is a type of private dining facility. Wiesner also teaches that clients may demand certain expertise (P.1, ¶.9). The examiner takes official notice that a certain expertise in the cooking field would include native training as may be required by clients for a particular type of cuisine or themed dining.

Goldman teaches a personal chef service that uses a questionnaire to compile client information including dietary requirements or restrictions.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Stipanovich to include clients who need chefs having a particular ethnic training to cook in accordance with clients' private dining requirements, such as suggested by Wiesner, in order to satisfy a client's demand for in-home cooking without the client having to hire a full-time chef. It would have been further obvious to compile information on a client's dietary requirements, such as suggested by Goldman, in order to ensure that the client is satisfied with the service and not jeopardize the health of the client by providing meals that fail to meet dietary requirements or restrictions.

b. Regarding claim 4, Stipanovich discloses the step of gathering information about the worker/employee (e.g., name, phone number).

c. Regarding claims 5-7, it is inherent in the Stipanovich, Wiesner, and Goldman combination method that the worker/employee "accesses" the client information, as broadly recited, insofar as the worker/employee must be provided the client requirements and location in order to perform the job at the private dining facility. Moreover, the contact between a temporary worker/employee and the agency is disclosed as "manually" in Stipanovich. The ordinary meaning of the term would include telephone, letter, and in-person contact. Thus claims 5-7 are met by the combination of Stipanovich, Wiesner, and Goldman.

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- d. Regarding claims 8 and 9, the Stipanovich, Wiesner, and Goldman combination includes an agency communication system comprising a client database, a chef database and communication apparatus, as discussed with respect to claims 1 and 5-7 above.
 - e. Regarding claim 10, the examiner takes official notice that a website is a well-known expedient for accessing and entering information into a computer database and that use of a website ensures consistency in entering various information by multiple users. It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the communication system of Stipanovich, Wiesner, and Goldman to include a website in order to ensure consistent entry of required information.
 - f. Regarding claim 12, the Stipanovich, Wiesner, and Goldman combination includes separate computers (see Stipanovich Fig.1, Ref.6, 2, and 11, respectively).
 - g. Regarding claim 13, the Stipanovich, Wiesner, and Goldman combination includes a telephone as discussed with respect to claims 5-7 above.
 - h. Regarding claims 15 and 16, Goldman teaches the in-home personal chef service will “buy groceries, cook and clean up afterward” (P.1, ¶.1). It is inherent in Goldman that the chef purchases the supplies for the preparation of the meal in accordance with the client’s dietary requirements or restrictions.
 - i. Regarding claim 20, Stipanovich discloses the client paying the agency and the agency paying the worker/employee.
4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stipanovich (US-5117353), Wiesner (article cited by applicant, reference 18), and Goldman (article cited by

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applicant, reference 22) as applied to claim 8 above, and further in view of APCA (website, About the American Personal Chef Association) and Malovany (article, Bar coding: a benchmark of efficiency).

APCA suggests the use of a material purchasing program by an association for culinary equipment and that the equipment is for use by association members.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Stipanovich, Wiesner, and Goldman combination to include supplies provided by the agency in order to ensure that the chefs are using equipment that meets the agency standards.

APCA is silent as to the use of an inventory database related to the equipment. Malovany suggests, generally, that using an inventory database for equipment will increase efficiency of an operation by knowing what is on hand at any given time and by avoiding repetitive and costly manual inventory processes. It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the combination to include an inventory database in order to increase efficiency of the communication system operation.

5. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stipanovich (US-5117353), Wiesner (article cited by applicant, reference 18), and Goldman (article cited by applicant, reference 22) as applied to claim 14 above, and further in view of APCA (website, About the American Personal Chef Association).

APCA suggests the use of a co-op material purchasing program by an association for culinary equipment, in particular the containers used by in-home chefs. Such an

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arrangement would benefit association members and reduce the capital required for chefs who may use the culinary equipment obtained by the association through the co-op program. It is inherent in co-op programs that members would have to reserve equipment in order to ensure that equipment is available for use by a member when needed.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Stipanovich, Wiesner, and Goldman combination to include the step of reserving supplies provided by the agency, as suggested by APCA, in order to ensure that the agency has enough equipment on hand to meet agency member/chef demands and to reduce the capital required for chefs who may need to use equipment.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Chef du Jour (website Chef du jour personal chef service) teaches a personal chef trained in many different ethnic cuisines.
- USPCA website teaches generally a communication system between clients and chefs throughout the US.
- Clark (US-5164897) teaches an communication agency that allows both the job clients and the employees to access information within the client and employee databases insofar as the system will perform matching of newly entered job client requirements to existing employees and, alternatively, matching of newly entered employees to open job client requirements.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamara L. Graysay whose telephone number is (703) 305-1918.

The examiner can normally be reached on Monday - Friday from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


tg


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